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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,047	09/18/2006	Lucille Beaudet	NEN-22402/16	6066
25006	7590	03/01/2010	EXAMINER	
GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C			XU, XIAOYUN	
PO BOX 7021				
TROY, MI 48007-7021			ART UNIT	PAPER NUMBER
			1797	
			MAIL DATE	DELIVERY MODE
			03/01/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b><i>Advisory Action Before the Filing of an Appeal Brief</i></b>	<b>Application No.</b> 10/563,047	<b>Applicant(s)</b> BEAUDET ET AL.	
	<b>Examiner</b> ROBERT XU	<b>Art Unit</b> 1797	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 16 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: \_\_\_\_\_.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Franks teaches that the fluorescent emission of the first scintillator material (Coumarin 540 with a pseudo-cumene as a solvent) has a fluorescent emission of 480, 485, 495, 500 nm, respectively (see Table 1) and the emission wavelength of cocktail of Coumarin 540 and BIBUQ is 485, 490, 500 nm, respectively (see table 1). The variation of emission wavelength is in a limited range. Even if the solid state fluorescence emission of Coumarin 540 were outside the range of 460-500 nm, this difference would not be significant enough to make the instant claims patentably distinguishable from Franks, because the emission wavelength is an inherent property of the compound, i.e. the same compound in the same environment will have the same emission wavelength.

In response applicant's request for evidence to support that the emission wavelength is an inherent property of a compound, an inherent property is a property that naturally exists with a compound, such as melting point, boiling point, emission wavelength etc. Although the inherent property can be affected by the environment, e.g. salt concentration can reduce the melting point of water, the affected property (melting point) is still an inherent property of a compound. In this case, emission wavelength is an inherent property of Coumarin 540. Although it can be affected by its environment, it is still an inherent property of Coumarin 540, i.e. under the same environment the emission wavelength of Coumarin 540 will be the same.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

/Yelena G. Gakh/  
Primary Examiner, Art Unit 1797

U.S. Patent and Trademark Office  
PTOL-303 (Rev. 08-06)

**Advisory Action Before the Filing of an Appeal Brief**

Part of Paper No. 20100222